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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION  
-----  
UNITED STATES OF AMERICA, et al.,  
Plaintiffs,  
vs. Case No. 1:10-CV-00910-WCG  
NCR CORPORATION, et al.,  
Defendants.  
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Deposition of JAMES HAHNENBERG  
Tuesday, August 28, 2012  
9:03 a.m.  
at  
Gramann Reporting, Ltd.  
710 North Plankinton Avenue  
Milwaukee, Wisconsin

Reported by Dawn M. Lahti, RPR/CRR

Deposition of JAMES HAHNENBERG, 8/28/12 Page 2

1 Deposition of JAMES HAHNENBERG, a witness  
2 in the above-entitled action, taken at the instance  
3 of the Defendants, pursuant to the Federal Rules of  
4 Civil Procedure, before Dawn M. Lahti, RPR,  
5 Certified Realtime Reporter, and Notary Public,  
6 State of Wisconsin, at 710 North Plankinton Avenue,  
7 Milwaukee, Wisconsin, on the 28th day of August,  
8 2012, commencing at 9:03 a.m. and concluding at  
9 5:45 p.m.

10 A P P E A R A N C E S:

11 U.S. DEPARTMENT OF JUSTICE, by  
12 Mr. Randall M. Stone  
13 P.O. Box 7611  
14 Washington, D.C. 20044-7611  
15 Appeared on behalf of the Plaintiffs.

16 GREENBERG TRAURIG LLP, by  
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18 2700 Two Commerce Square  
19 2001 Market Street  
20 Philadelphia, Pennsylvania 19103  
21 Appeared on behalf of P.H.  
22 Glatfelter Company.

23 HUNSUCKER GOODSTEIN & NELSON, PC, by  
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25 3717 Mt. Diablo Boulevard, Suite 200  
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Appeared on behalf of Menasha  
Corporation.

STAFFORD ROSENBAUM, LLP, by  
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Appeared by phone on behalf of City of  
Appleton.

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1 APPEARANCES CONTINUED:

2 DAVIS & KUELTHAU, S.C., by  
3 Mr. Mark F. Yokom  
4 111 East Kilbourn Avenue, Suite 1400  
5 Milwaukee, Wisconsin 53202  
6 Appeared by phone on behalf of  
7 Neenah-Menasha Sewerage Commission.

8 CRAVATH, SWAINE & MOORE LLP, by  
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10 Mr. Benjamin F. Heidlage  
11 Worldwide Plaza  
12 825 Eighth Avenue  
13 New York, New York 10019  
14 Appeared on behalf of NCR Corporation.

15 QUARLES & BRADY LLP, by  
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19 Appeared on behalf of WTM I Company.

20 HERMES LAW, LTD., by  
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24 Appeared on behalf of Appleton Papers,  
25 Inc.

von BRIESEN & ROPER, s.c., by  
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Milwaukee, Wisconsin 53202  
Appeared on behalf of CBC Coating, Inc.

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1 E X A M I N A T I O N

2 BY MR. MANDELBAUM 5  
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7  
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9

10 E X H I B I T S

11 EXHIBIT NO. PAGE MARKED

12 Exhibit 4219A Answers and Objections 7  
13 Exhibit 4219B E-mail of 10/5/00 14  
14 Exhibit 4219C NRRB Briefing Package 19  
15 Exhibit 4219D PRAP, October 2001 33  
16 Exhibit 4219E Letter of 7/16/99 51  
17 Exhibit 4219F E-mail of 9/22/99 119  
18 Exhibit 4219G Article, 10/25/97 145  
19 Exhibit 4219H E-mail of 6/4/98 152  
20 Exhibit 4219I E-mails of 2/19/99 153  
21 Exhibit 4219J Article, 12/10/97 156  
22 Exhibit 4219K Record of Decision, OU3, OU4, OU5 167  
23 Exhibit 4219L E-mail of 7/6/00 209  
24 Exhibit 4219M Excerpts from LFR, 12/'02 216  
25 Exhibit 4219N Excerpts from EPA Cost Estimates 232

(Original exhibits attached to original transcript.  
Copies of exhibits attached to copies of transcript.)

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1 TRANSCRIPT OF PROCEEDINGS

2 JAMES HAHNENBERG, called as a witness  
3 herein, having been first duly sworn on oath, was  
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. MANDELBAUM:

7 Q. Good morning, Mr. Hahnenberg. We've known each  
8 other a long time.

9 A. Um-hum.

10 Q. I'm David Mandelbaum. I'm still representing the  
11 P.H. Glatfelter Company. And I want to go over a  
12 few ground rules for this deposition before we get  
13 started so I'm sure we're on the same page.

14 A. Okay.

15 Q. Have you been deposed before?

16 A. No.

17 Q. Okay. First time for everything, and I'm sorry for  
18 this -- more fun things coming. Can we take a  
19 two-second break?

20 (Discussion off the record.)

21 BY MR. MANDELBAUM:

22 Q. So I will be asking you some questions. When I'm  
23 through, other people will be asking you some  
24 questions. When you respond to questions, I'm  
25 going to ask that you respond verbally. You've

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<p>1 Department of Justice?</p> <p>2 A. I believe he has.</p> <p>3 Q. Are those notes in the administrative record?</p> <p>4 A. I don't know.</p> <p>5 Q. Are your e-mails in the administrative record?</p> <p>6 A. I'm not sure.</p> <p>7 Q. I have to pull clean copies of a document out of</p> <p>8 this box. So if you don't mind, I'd like to take a</p> <p>9 two-minute break.</p> <p>10 MR. STONE: Okay.</p> <p>11 (Discussion off the record.)</p> <p>12 (Exhibit 4219B was marked for</p> <p>13 identification.)</p> <p>14 BY MR. MANDELBAUM:</p> <p>15 Q. I'm showing you a document that the reporter has</p> <p>16 marked 4219B.</p> <p>17 A. Um-hum.</p> <p>18 Q. This is a printout of an e-mail. Do you see the</p> <p>19 number in the lower right-hand corner?</p> <p>20 A. Yes.</p> <p>21 Q. EWDNR?</p> <p>22 A. Yes.</p> <p>23 Q. That indicates, I understand from Mr. Stone, that</p> <p>24 this came from a collection of e-mails and other</p> <p>25 materials that Mr. Lynch had.</p>		<p>1 Mark Velleux.</p> <p>2 A. Okay.</p> <p>3 Q. And Mark Velleux was the modeler for DNR, correct?</p> <p>4 A. Correct.</p> <p>5 Q. I'm curious about this document. If you look at --</p> <p>6 on the second sheet in the next-to-the-last</p> <p>7 paragraph, you see in the last sentence of that</p> <p>8 paragraph reads I believe, I understand the</p> <p>9 concerns with releasing the material and can</p> <p>10 provide you with NOAA's assurance that the</p> <p>11 electronic file would be treated as FOIA exempt,</p> <p>12 litigation sensitive --</p> <p>13 A. Where is that?</p> <p>14 Q. This is the next-to-the-last paragraph in this</p> <p>15 document.</p> <p>16 A. Okay. I see the second sentence, okay.</p> <p>17 Q. -- would be treated as FOIA exempt, litigation</p> <p>18 sensitive and under no circumstances released or</p> <p>19 printed out.</p> <p>20 And then the last sentence is, I</p> <p>21 could provide further assurance that after viewing</p> <p>22 the presentation and potentially discussing with</p> <p>23 Mark, we would erase/delete the file such that no</p> <p>24 permanent record would remain. Right?</p> <p>25 A. Right.</p>	
Deposition of JAMES HAHNENBERG, 8/28/12	Page 15	Deposition of JAMES HAHNENBERG, 8/28/12	Page 17
<p>1 A. Okay.</p> <p>2 Q. Now, if you look at this e-mail, it's an e-mail</p> <p>3 trail, correct?</p> <p>4 A. Yes.</p> <p>5 Q. I'd like you to look at the -- at the original</p> <p>6 e-mail, the bottom e-mail.</p> <p>7 A. Okay.</p> <p>8 Q. It appears to be from a person named Todd -- does</p> <p>9 he pronounce his name Goeks?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Mr. Goeks or Dr. Goeks?</p> <p>12 A. He works for NOAA, and I think he was a liaison to</p> <p>13 the EPA to provide support on this project on</p> <p>14 behalf of NOAA.</p> <p>15 Q. So he works for the United States?</p> <p>16 A. Yes.</p> <p>17 Q. Now he's looking to get a PowerPoint presentation</p> <p>18 that Mark prepared. Is that Mark Velleux?</p> <p>19 A. I don't know, probably. But that's the only Mark I</p> <p>20 know of who's been involved in the project early</p> <p>21 on.</p> <p>22 Q. If you look at the latest e-mail, the one from</p> <p>23 Mr. Lynch to among other people you.</p> <p>24 A. Right.</p> <p>25 Q. I think it refers to a PowerPoint presentation by</p>		<p>1 Q. Do you recall seeing this --</p> <p>2 A. No, I don't.</p> <p>3 Q. -- set of e-mails?</p> <p>4 A. No, I don't.</p> <p>5 Q. Is the term litigation sensitive a term that was</p> <p>6 used either regularly or from time to time within</p> <p>7 the United States government?</p> <p>8 A. I would guess it is but not a term that I use much.</p> <p>9 Q. What do you understand Dr. Goeks to mean by that</p> <p>10 term?</p> <p>11 A. Well, the way I would interpret it is litigation</p> <p>12 sensitive means it would be something that would</p> <p>13 probably be kept confidential.</p> <p>14 Q. Does it mean that he thought there might be</p> <p>15 litigation involving this material?</p> <p>16 A. Reading the e-mail, it would appear so, yes.</p> <p>17 Q. And this e-mail is dated September of 2000. Do you</p> <p>18 see that?</p> <p>19 A. Yes.</p> <p>20 Q. And at about that time, were you involved in the</p> <p>21 Fox River matter?</p> <p>22 A. Oh, well, it was actually dated October 2000.</p> <p>23 Q. That's the -- that's the latest e-mail in this</p> <p>24 trail. The original one from Dr. Goeks, which I</p> <p>25 think you're also copied on --</p>	

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<p>1 A. Oh, yes, I see.</p> <p>2 Q. -- dated September --</p> <p>3 A. Um-hum.</p> <p>4 Q. -- you were involved in the Fox River matter at the</p> <p>5 time?</p> <p>6 A. Yes.</p> <p>7 Q. And did you believe that litigation was reasonably</p> <p>8 likely at that time?</p> <p>9 A. I didn't know.</p> <p>10 Q. You didn't know?</p> <p>11 A. No.</p> <p>12 Q. So if -- do you recall submitting a package to the</p> <p>13 National Remedy Review Board?</p> <p>14 A. Yes.</p> <p>15 Q. Did you prepare it?</p> <p>16 A. Yes.</p> <p>17 Q. And that was in July of 1999, correct?</p> <p>18 A. It sounds right.</p> <p>19 Q. And that package is marked Enforcement</p> <p>20 Confidential. Do you recall that?</p> <p>21 A. I don't remember.</p> <p>22 Q. We can look at it if you want.</p> <p>23 A. Sure.</p> <p>24 (Exhibit 4219C was marked for</p> <p>25 identification.)</p>		<p>1 Q. Does it mean that litigation was anticipated at</p> <p>2 that point?</p> <p>3 A. It means it may have been possible.</p> <p>4 Q. Okay.</p> <p>5 A. Sure.</p> <p>6 Q. At any time has anyone provided any direction to</p> <p>7 you or to other employees at EPA working on the Fox</p> <p>8 River matter concerning how documents are to be</p> <p>9 managed because the matter might end up in</p> <p>10 litigation?</p> <p>11 A. Yes.</p> <p>12 Q. What was the direction?</p> <p>13 A. I don't remember exactly.</p> <p>14 Q. Can you recall when you received that direction?</p> <p>15 A. Not exactly. Over the years most likely, but I</p> <p>16 don't really remember it specifically.</p> <p>17 Q. So if you look back at Exhibit 4219B -- let me back</p> <p>18 up. Is this -- this direction that you received,</p> <p>19 was it direction from counsel?</p> <p>20 A. In which case?</p> <p>21 Q. For any lawyer --</p> <p>22 A. I don't remember.</p> <p>23 Q. You don't remember who told you about documents,</p> <p>24 and you don't remember what they said?</p> <p>25 A. I remember the documents. I don't remember people</p>	
Deposition of JAMES HAHNENBERG, 8/28/12	Page 19	Deposition of JAMES HAHNENBERG, 8/28/12	Page 21
<p>1 BY MR. MANDELBAUM:</p> <p>2 Q. I'm giving you a document which the reporter has</p> <p>3 marked 4219C.</p> <p>4 A. Okay.</p> <p>5 Q. Do you recognize it?</p> <p>6 A. Let me look at it. I don't remember it in detail,</p> <p>7 but it looks like something I would have prepared,</p> <p>8 and it has my handwritten notes on it.</p> <p>9 Q. So these are your handwritten notes on it?</p> <p>10 A. It appears like my writing, yes.</p> <p>11 Q. And there was a volume two, right?</p> <p>12 A. Yes.</p> <p>13 Q. And your name is on the front of this?</p> <p>14 A. Yes.</p> <p>15 Q. Does that indicate that you prepared it?</p> <p>16 A. Yes.</p> <p>17 Q. Now, if you look at the top of the cover page and</p> <p>18 then on every page in the text it says enforcement</p> <p>19 confidential?</p> <p>20 A. Right.</p> <p>21 Q. What does that mean?</p> <p>22 A. Well, it would mean that it would be kept with the</p> <p>23 EPA only.</p> <p>24 Q. And why is it enforcement confidential?</p> <p>25 A. I don't know.</p>		<p>1 telling me about their enforcement confidential</p> <p>2 aspect to them.</p> <p>3 Q. Do you remember anyone telling you either keep</p> <p>4 documents or don't keep documents --</p> <p>5 A. No.</p> <p>6 Q. -- because litigation --</p> <p>7 A. I was never told that.</p> <p>8 Q. You were never told that?</p> <p>9 A. No.</p> <p>10 Q. Even up to today?</p> <p>11 A. Correct. I was told to always keep all documents.</p> <p>12 Q. Okay. So I'm looking at --</p> <p>13 A. To an extreme in fact because I have a million</p> <p>14 e-mails.</p> <p>15 Q. So I'm looking then at Dr. Goeks' e-mail, and he's</p> <p>16 offering to delete a document when he's done with</p> <p>17 it, right?</p> <p>18 A. He may have, yes. That's what it says in the</p> <p>19 e-mail, correct.</p> <p>20 Q. And he's offering to delete it specifically because</p> <p>21 it could end up in litigation, right?</p> <p>22 A. That seems to be what he's saying.</p> <p>23 Q. Is that something that was a common practice within</p> <p>24 the United States?</p> <p>25 A. Not at all. Not that I know of.</p>	

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<p>1 Q. Do you know whether anyone else has either kept 2 everything or deleted some things? 3 A. The general direction is to keep everything, like I 4 say, to an extreme because now I have like 60,000 5 e-mails or something like that that we've been 6 compiling in the database. 7 I mean I've had training in the past 8 regarding administrative records and that kind of 9 stuff. And my understanding from that training was 10 you keep everything no matter how trivial -- you 11 don't make the judgment. You just keep it. It's a 12 government record. That's my understanding. 13 Q. And you've looked at the administrative record, 14 right? 15 A. Um-hum, yes. 16 Q. Are those e-mails in the administrative record? 17 A. These? I don't know. 18 Q. No, the e-mails that you've collected, 60,000 19 e-mails. 20 A. Oh, I don't know how those have been handled. I 21 put them on this database which we have in our 22 Lotus notes, and the counsel has handled it from 23 there. 24 Q. And when you've examined the administrative record, 25 you can't tell me one way or the other whether</p>		<p>1 Q. You expected Dr. Goeks to follow it? 2 A. I had no understanding one way or the other of how 3 he would react. I didn't talk to Todd about this. 4 I don't remember this e-mail, and I don't remember 5 this as an issue. 6 I can tell you my practice is to 7 keep everything, and I would expect others to do 8 the same. Obviously this is saying something 9 different, but that's not my practice. 10 Q. Why would DNR to your knowledge have wanted this 11 document destroyed? 12 A. I don't know. It would only be my speculation as 13 to why. And that really would be pure speculation 14 as to why they would. 15 Q. Let's shift gears a little bit. You say you've 16 been involved with the Fox River matter? 17 A. Um-hum, yes. 18 Q. In what capacity? 19 A. Project manager for U.S. EPA. 20 Q. And you're employed by U.S. EPA? 21 A. Correct. 22 Q. What's your job title? 23 A. Remedial project manager. 24 Q. And that's at EPA Region 5 in Chicago? 25 A. Correct.</p>	
Deposition of JAMES HAHNENBERG, 8/28/12	Page 23	Deposition of JAMES HAHNENBERG, 8/28/12	Page 25
<p>1 they're in there? 2 A. I don't know. 3 Q. Now, if you look at the October 5 e-mail from 4 Mr. Lynch to Dr. Goeks which copies you, if you 5 look to the -- in the next-to-the-last paragraph, 6 the next to the -- the third-to-the-last sentence. 7 It says, Please note that we expect 8 you to follow this assurance, meaning the assurance 9 that there would be a deletion -- 10 A. Right. 11 Q. -- and will not forward this to anyone else, 12 emphasis, without the expected -- expressed 13 permission of either Greg Hill or myself. 14 Do you see that sentence? 15 A. Yes, I do. 16 Q. Now you also say -- he also says that the -- at the 17 bottom, By copy of this e-mail, I'm also sending a 18 copy of this presentation to Jim Hahnenberg of EPA. 19 A. Right. Yes. 20 Q. Did you have any reaction that you can recall to 21 this e-mail? 22 A. I don't remember, but I can tell you that kind of 23 direction, I would not follow. 24 Q. You would not follow? 25 A. I would not follow.</p>		<p>1 Q. When did you first become involved in that capacity 2 with the Fox River matter? 3 A. 1996 was the first meeting that we had relative to 4 the Fox River that I was involved in. 5 Q. And when did you join EPA Region 5? 6 A. 1989 -- June 1989. 7 Q. And before that, where were you employed? 8 A. I was in the oil exploration business in Texas. 9 Q. Who were you employed by? 10 A. Marathon Oil Company. 11 Q. And when did you join Marathon? 12 A. I believe it was 1980. 13 Q. What was your job at Marathon? 14 A. I was an exploration geologist. 15 Q. And before Marathon, what did you do? 16 A. I was a student. I had other various small summer 17 jobs. 18 Q. Describe your education for me after high school. 19 A. I went to Central Michigan, got my bachelor's of 20 science, graduated in 1975. I went to Michigan 21 State University for about a year. 22 Then I took some time off, and then 23 I ended up going back to -- well, going to grad 24 school at Western Michigan University, and I think 25 that was probably about -- I went to geology field</p>	

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<p>1 camp in the summer of 1976.</p> <p>2 Then from '76 to '77 I think I went</p> <p>3 to Michigan State. Then I believe it was 1978</p> <p>4 roughly I started at Western Michigan in their</p> <p>5 Master of Science program in geology.</p> <p>6 Q. Did you complete that program?</p> <p>7 A. Yes.</p> <p>8 Q. When did you get a Master of Science?</p> <p>9 A. I think it was 1980 when I officially got my</p> <p>10 degree.</p> <p>11 Q. So you have a Master of Science in geology, and</p> <p>12 what was your undergraduate degree in?</p> <p>13 A. Geology.</p> <p>14 Q. All right. So you consider yourself a geologist?</p> <p>15 A. Correct.</p> <p>16 Q. Do you have any experience at EPA working on</p> <p>17 contaminated sediment sites other than the Fox</p> <p>18 River?</p> <p>19 A. Yes.</p> <p>20 Q. Which sites?</p> <p>21 A. Manistique River Harbor, area of concern; Kalamazoo</p> <p>22 River, Pine River and Siawassee River.</p> <p>23 Q. Can you describe for me your role with respect to</p> <p>24 the Manistique?</p> <p>25 A. I was both the remedial project manager, and I</p>		<p>1 A. No.</p> <p>2 Q. Has dredging been completed?</p> <p>3 A. Yes.</p> <p>4 Q. When was dredging completed?</p> <p>5 A. Well, it was after I left the project, so I'm not</p> <p>6 sure exactly, late '90s. '97 to '98, something</p> <p>7 like that, but I don't know exactly.</p> <p>8 Q. Are you familiar with the outcome of that project?</p> <p>9 A. I'm not entirely informed. I know there was lots</p> <p>10 of monitoring done by EPA. The details of it, I</p> <p>11 just know a few bits and pieces, so I don't know</p> <p>12 the specifics of the outcome.</p> <p>13 Q. Are you familiar with the costs experienced there?</p> <p>14 A. Vaguely.</p> <p>15 Q. Who did the work at Manistique?</p> <p>16 A. EPA did. I mean, EPA contractors did.</p> <p>17 Q. Now you say you were involved with Kalamazoo?</p> <p>18 A. Yes.</p> <p>19 Q. What was your role at Kalamazoo?</p> <p>20 A. I was remedial project manager there. It was a</p> <p>21 state-lead site, so my role was really secondary.</p> <p>22 Q. And when were you involved with Kalamazoo?</p> <p>23 A. I don't remember the years. It was quite a few</p> <p>24 years ago.</p> <p>25 Q. Are you still involved with Kalamazoo?</p>	
Deposition of JAMES HAHNENBERG, 8/28/12	Page 27	Deposition of JAMES HAHNENBERG, 8/28/12	Page 29
<p>1 operated in some capacity as an on-scene</p> <p>2 coordinator. I was really officially designated as</p> <p>3 the remedial project manager.</p> <p>4 Q. And when did that occur -- withdrawn. When did you</p> <p>5 have that role?</p> <p>6 A. I'm not certain, but I'm going to say it was</p> <p>7 probably 1993 to 1994. It was quite a few years</p> <p>8 ago, so I'm not exactly sure on the dates.</p> <p>9 Q. But it's before your involvement with the Fox?</p> <p>10 A. Correct.</p> <p>11 Q. And what was going on at Manistique during the time</p> <p>12 that you were working on it?</p> <p>13 A. We were proposing that some dredging should be done</p> <p>14 there, and I can go on about that, but that's our</p> <p>15 initial involvement.</p> <p>16 Q. That's what EPA proposed?</p> <p>17 A. Correct.</p> <p>18 Q. Was dredging actually performed?</p> <p>19 A. Yes.</p> <p>20 Q. Was that dredging performed during your time on the</p> <p>21 project?</p> <p>22 A. Yes.</p> <p>23 Q. Did you supervise the dredging?</p> <p>24 A. Some of the time I did.</p> <p>25 Q. Were you there when dredging was completed?</p>		<p>1 A. No, no.</p> <p>2 Q. Were you involved with Kalamazoo during a time when</p> <p>3 there was any response action being taken?</p> <p>4 A. You know, I'm not sure. We did do a small removal</p> <p>5 there. It was a dry excavation-type project, and</p> <p>6 I'm not sure if I was on the project then or not to</p> <p>7 be honest with you. I might have been. It was a</p> <p>8 dry excavation, but it was in a small tributary to</p> <p>9 the Kalamazoo.</p> <p>10 Q. You also were involved with the Pine River I think</p> <p>11 you said?</p> <p>12 A. Correct.</p> <p>13 Q. What was your role with the Pine River?</p> <p>14 A. For a short time I was remedial project manager</p> <p>15 while the other project manager was ill at the</p> <p>16 time, so I took over for a few months.</p> <p>17 Q. And when was that?</p> <p>18 A. I don't remember the dates. It's quite a few years</p> <p>19 ago.</p> <p>20 Q. Decade?</p> <p>21 A. Yeah, probably 10, 12 years ago.</p> <p>22 Q. So it was concurrent with your involvement with the</p> <p>23 Fox River?</p> <p>24 A. I believe so.</p> <p>25 Q. Was any response action underway at the time?</p>	

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<p>1 A. No.</p> <p>2 Q. And the last river you mentioned, I believe, was --</p> <p>3 A. Siawassee River.</p> <p>4 Q. Yes, which I can never say. Could you spell that</p> <p>5 for the court reporter?</p> <p>6 A. S-I-A-W-A-S-S-E-E.</p> <p>7 Q. And what was your role with respect to --</p> <p>8 A. Remedial project manager -- still my assignment.</p> <p>9 Q. And you're still working on that matter you say?</p> <p>10 A. Correct.</p> <p>11 Q. Is there a response action underway there?</p> <p>12 A. Yes, it's monitoring natural recovery.</p> <p>13 Q. What's the contaminant at the Siawassee?</p> <p>14 A. PCBs.</p> <p>15 Q. Were you the remedial project manager at the time</p> <p>16 of the selection of the remedy for the Siawassee?</p> <p>17 A. No, I was not.</p> <p>18 Q. Now, who had the lead for the Fox River?</p> <p>19 A. At that time?</p> <p>20 Q. At any time.</p> <p>21 A. Oh, the State, the Wisconsin DNR. They always</p> <p>22 have, and they still do.</p> <p>23 Q. Is there a memorandum of agreement with the State</p> <p>24 where there's a formal designation of the State as</p> <p>25 the lead agency?</p>		<p>1 BY MR. MANDELBAUM:</p> <p>2 Q. That's okay. Finish your answer.</p> <p>3 A. That was it.</p> <p>4 Q. Now, you were the remedial project manager for the</p> <p>5 Fox River at the time that the remedy was selected,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Now, let's get the timeline in mind. Am I correct</p> <p>9 that the Remedial Investigation and Feasibility</p> <p>10 Study for this site was completed in 2001?</p> <p>11 A. Officially it was completed in 2002 because that's</p> <p>12 when we finished the first record of decision.</p> <p>13 That's when you officially complete an RI/FS.</p> <p>14 Q. But you issued a Proposed Remedial Action Plan or</p> <p>15 PRAP in 2001, correct?</p> <p>16 A. I think it was before -- well, I'm not sure of the</p> <p>17 year, but we did issue what we call a proposed</p> <p>18 plan. PRAP is kind of an outmoded term. We don't</p> <p>19 really use that. It's a proposed plan. I'm not</p> <p>20 sure of the exact date it was issued, but that was</p> <p>21 issued by EPA and Wisconsin DNR.</p> <p>22 Q. Let me just make sure we're on the same page. Let</p> <p>23 me find the document. Here we go.</p> <p>24 (Exhibit 4219D was marked for</p> <p>25 identification.)</p>	
Deposition of JAMES HAHNENBERG, 8/28/12	Page 31	Deposition of JAMES HAHNENBERG, 8/28/12	Page 33
<p>1 A. Well, there's a memorandum of understanding between</p> <p>2 the State and the EPA and the trustees, basically</p> <p>3 an agreement to work together on the project.</p> <p>4 Q. That's an intergovernmental partners agreement?</p> <p>5 A. Right, correct.</p> <p>6 Q. But there's no -- in a --</p> <p>7 A. There's no -- like we call them SMOAs or something</p> <p>8 like that. As far as I know, there's not a formal</p> <p>9 agreement between the EPA and the State</p> <p>10 specifically for just the Fox River other than this</p> <p>11 memorandum of understanding.</p> <p>12 Q. And is that a permissible way to proceed because</p> <p>13 the site is not included on the national priorities</p> <p>14 list?</p> <p>15 A. I'm assuming it is. I would say it is, yes.</p> <p>16 Q. What is -- that it's permissible?</p> <p>17 A. Sure, yes.</p> <p>18 Q. Because it's a Superfund alternative site?</p> <p>19 A. Right, yes. Well, I don't know if that's what we</p> <p>20 call it, but it's certainly acceptable and</p> <p>21 permissible and allowed.</p> <p>22 MR. STONE: Be sure to let him finish his</p> <p>23 question before you answer.</p> <p>24 THE WITNESS: Sorry.</p> <p>25</p>		<p>1 BY MR. MANDELBAUM:</p> <p>2 Q. I'm showing you a document which is marked Exhibit</p> <p>3 4219D, and I realize I have not been good about</p> <p>4 identifying these documents for people on the</p> <p>5 phone. This is the Proposed Remedial Action Plan</p> <p>6 for the lower Fox River in Green Bay dated</p> <p>7 October 2001.</p> <p>8 Do you recognize that document?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And this is the proposal that's put out for public</p> <p>11 comment of how EPA proposed to address this site,</p> <p>12 correct?</p> <p>13 A. Correct. Well, EPA and DNR really jointly,</p> <p>14 although it has -- we jointly issued it, but EPA is</p> <p>15 administratively the lead.</p> <p>16 Q. Administratively the lead. Explain that for me.</p> <p>17 A. Well, I take that back. It was a state --</p> <p>18 considered a state lead. We call it technical lead</p> <p>19 because enforcement matters are mostly left to the</p> <p>20 federal government. We don't for the most part</p> <p>21 rely on state authority in that regard.</p> <p>22 Q. So in 2001 the PRAP was issued -- is PRAP a term</p> <p>23 that --</p> <p>24 A. It's not a term we use, but it would -- proposed</p> <p>25 plan.</p>	

<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 114</p> <p>1 I mean, sure, if there's no mass 2 there, then there's no chance for any -- there's no 3 PCBs there, there's zero concentrations, and of 4 course the risk is nonexistent. 5 So it is a factor, but is it the 6 most important factor? No. And the way -- it's 7 just a matter of expressing what PCBs are there. 8 You can express it in concentration. You can 9 express it in mass. It's just a different way of 10 expressing -- different ways of expressing the same 11 thing. 12 MR. STONE: Dave, let me just make one 13 mention for the record, and that is Mr. Hahnenberg 14 was noticed for the deposition in both his 15 individual capacity, and he was also designated as 16 a 30(b)(6) witness. 17 On this topic of the importance of 18 mass, et cetera, our position is this is outside 19 the scope of any of the 30(b)(6) designations. So 20 I'm not saying you can't ask him about it. I'm 21 just saying in many instances you've said on this 22 topic what's the answer for United States, et 23 cetera, et cetera. 24 Our position, and you don't have to 25 agree to it, is that this is outside the scope of</p>	<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 116</p> <p>1 Q. So you don't want to agree with me? 2 A. Yeah. 3 Q. Okay. Because I'm wondering when there were other 4 people in the room talking about mass removal, 5 Mr. Hahnenberg, were they talking about things 6 which fit neatly in your vocabulary, or were they 7 advocating for dredging in a way that didn't neatly 8 fit into the NCP consideration? 9 A. Again, you'd have to ask them. 10 Q. I'm asking you if they were there -- 11 A. I can't tell you what was in their mind. 12 Q. I'm asking you what was in your mind. 13 A. I wasn't there. What was in my mind when we did 14 these decisions I can tell you was concentration 15 was the factor that I considered and looked at and 16 proposed to our management in terms of remedy. It 17 was concentration-based. 18 Q. Did you or anyone in your hearing ever say in words 19 or substance, the State of Wisconsin would like a 20 remedy that removes more mass? 21 A. I don't know. 22 Q. You don't know whether anyone said that in your 23 hearing? 24 A. No, I don't remember. It's a long time ago. I 25 doubt I did.</p>
<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 115</p> <p>1 the 30(b)(6) topics. 2 MR. MANDELBAUM: I understand -- I 3 understand your position, and I will call your 4 attention to -- I'll call your attention to the -- 5 I think 1C has to do with movement, which is what 6 he's been telling us about, and 1C3 talks about the 7 use of the models, which is what he's been talking 8 about. 9 MR. STONE: Okay. I understand your 10 position. I don't agree with you, but proceed. 11 MR. MANDELBAUM: That's fine. 12 BY MR. MANDELBAUM: 13 Q. If someone was in the room who in his or her heart 14 of hearts wanted mass removed for whatever reason, 15 would that person -- would that desire to remove 16 mass tend to influence the decision towards removal 17 by dredging or towards dilution or encapsulation by 18 capping recovery? 19 A. I'd say it's very hypothetical and speculative as 20 to what that hypothetical person might think. I 21 mean, I don't know. It depends on the person. 22 Q. Is this even a controversial question? If you want 23 to remove mass, don't you want to remove mass? 24 A. If you already know the answer, then why are you 25 asking the question?</p>	<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 117</p> <p>1 Q. What was the relationship between the United 2 States -- between EPA, DNR and the trustees in 3 terms of developing the remedy? 4 A. It was good. 5 Q. I don't mean in that way. Did one agency make all 6 the decisions, or was it a collective decision? 7 A. I would say it was a collective -- joint decision, 8 I would put it, between DNR and EPA. Fish &amp; 9 Wildlife, which is the main trustee I'm thinking 10 of, had little to do with selection of the remedy. 11 We did coordinate with the trustees. 12 In some cases we could share data. That was mostly 13 what it was for. That coordination was data 14 sharing. And as you read in the one letter, they 15 may have had opinions, and they could express those 16 opinions. 17 In some cases as you pointed out 18 yourself, they expressed an opinion, and we didn't 19 do what they asked. So I mean if we felt it was 20 inappropriate or the opinion was not something that 21 we wanted to go with, we didn't. We had no 22 obligation to go with those kinds of 23 recommendations. 24 Q. Turn to page 3 of Exhibit 4219E. 25 A. Okay.</p>

<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 126</p> <p>1 It will still be well within, say, 2 the NCP or legal parameters or whatever. But 3 generally I think what David is saying here is that 4 we should try and get along better. That's what 5 he's saying. 6 Q. The restoration decision-making by the trustees was 7 not -- was not driven by the same selection 8 criteria as the remedy selection by EPA, right? 9 A. Correct. 10 MR. MANDELBAUM: Now is a good time for a 11 break. 12 (Discussion off the record.) 13 BY MR. MANDELBAUM: 14 Q. Mr. Hahnenberg, I'm actually looking at a document, 15 but I'm not going to give it to you because it's 16 privileged. Who's David Ullrich? 17 A. He is retired. Years ago when EPA was first 18 involved in the Fox River project, he was acting 19 regional administrator. 20 Q. And was that true in November 1999? 21 A. I believe so. 22 Q. So if he said something about the Fox River remedy 23 selection, what influence would that have on the 24 people working on that project? 25 A. It probably would have some influence, but he was</p>	<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 128</p> <p>1 A. Nope. 2 MR. STONE: David, you said it's 3 privileged. Privileged for you or privileged for 4 me? 5 MR. MANDELBAUM: Privileged for me. 6 MR. STONE: Okay. Thank you. 7 BY MR. MANDELBAUM: 8 Q. Do you recall Mr. Ullrich saying at any time in 9 your presence in words or substance in the hearing 10 of other people that from his point of view, there 11 were only two issues, first, how much to dredge, 12 and second, where to put the dredged spoils? 13 A. I don't remember that. 14 Q. If he had said that, that would have had an 15 influence on the remedy selection, would it not? 16 A. I don't know. I can't put myself in Bill Muno's 17 head. 18 Q. You have no recollection, you say, of this gizzard 19 shad question? 20 A. No, I don't. 21 Q. Would you look at Exhibit 4219F? 22 A. Yeah. It was in 1999? 23 Q. Yep. 24 A. Well -- 25 MR. STONE: No question pending. Wait</p>
<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 127</p> <p>1 not the decision maker. 2 Q. Who was the decision maker? 3 A. Bill Muno. It was delegated to him. 4 Q. Would Mr. Muno tend to listen to what Mr. Ullrich 5 wanted? 6 A. I imagine. Being acting regional administrator, of 7 course. 8 Q. So do you recall a meeting in Chicago on or about 9 November 18, 1999 attended by Mr. Ullrich, 10 Mr. Ullrich's executive assistant Roger Grimes, 11 you, Cheri Eggleston, Peggy Schneider, Paul Karch, 12 Andy Schlickman, me and David Ludwig? 13 A. No. 14 Q. Do you recall attending a meeting to discuss 15 focusing sediment remediation on areas where the 16 pathway to fish might be concentrated? 17 A. No. 18 Q. Do you recall any conversation at any time, or did 19 you review anything in the administrative record 20 about the pathway from sediments to foraging carp 21 who would stir up soft sediment which would then be 22 taken into the gullets of the digestive systems of 23 gizzard shad? 24 A. No. 25 Q. You don't recall that at all?</p>	<p>Deposition of JAMES HAHNENBERG, 8/28/12 Page 129</p> <p>1 for a question. 2 THE WITNESS: Sorry. Sorry, David. 3 MR. MANDELBAUM: No problem. I seem to 4 only have one copy of this one. 5 BY MR. MANDELBAUM: 6 Q. Was any consideration given by EPA at any time 7 about or trying to identify the pathway by which 8 fish took up PCBs and breaking that pathway? 9 A. Well, probably because we'd be part of -- 10 potentially part of some remedial actions. 11 Q. Was there any effort made to narrow the remedial 12 action to focus specifically on a pathway or 13 pathways? 14 A. I don't recall us ever narrowing it like that. 15 Q. Why? 16 A. Because we usually look at a broader array of 17 considerations. I mean that's why it would seem 18 unlikely that we would ever take that approach. 19 That would be very much against a lot of guidance 20 and other things that we have in terms of how we 21 approach things, that we would not focus it to that 22 degree. 23 MR. STONE: I'll mention for the record 24 again that our view is that this topic area is 25 outside the scope of the 30(b)(6) designation, but</p>

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<p>1 and 2007, did the cost variance expectation of the 2 government change? 3 MR. STONE: Objection, vague. Go ahead 4 and answer him if you can. 5 THE WITNESS: I'm not sure. 6 BY MR. NASAB: 7 Q. Who within the government would you say was the 8 primary decision maker about whether -- how to 9 memorialize and give notice of the change in the 10 cost estimate for the remediation? 11 A. Rick Karl. He's the decision maker. It's been 12 delegated to him by the regional administrator in 13 Region 5 to the Superfund division director which 14 is Rick Karl. Well, in earlier documents it was 15 Bill Muno who has since retired. More recently 16 it's Rick Karl. 17 Q. Who did the drafting of this document? 18 A. It was -- 19 Q. By this document -- 20 A. It was a combination of people, DNR and EPA, and I 21 was the person for EPA who did the drafting. Other 22 people were involved with reviewing and commenting 23 on it. Quite a variety of people. So I don't 24 know. 25 I really couldn't recall all the</p>	<p>1 are things like changes to components of remedies. 2 It could be some cost increases as opposed to a 3 fundamental change which you actually change which 4 is the ROD amendment. In that case you actually 5 change what you're doing, the actual remedy. 6 So in other words, if we went from, 7 say, an all-dredging remedy to an all-capping 8 remedy, that would be a fundamental change. And 9 going from the earlier ROD to the ROD amendment 10 that we did do prior to this, we went from a 11 dredging remedy with some capping contingency to a 12 combination remedy of dredging, capping and sand 13 covers. So that was a fundamental change. 14 This was not a significant change -- 15 excuse me, it was a significant change I meant to 16 say. It was not a fundamental change. 17 Q. So is it your view that a change in the cost 18 estimate from each project can't constitute a 19 fundamental change? 20 A. Not at this level. 21 Q. Fair enough, but that's, I think, a different 22 question. My question is, can a difference in cost 23 estimate in your opinion constitute a fundamental 24 change? 25 A. I'm not sure that would be a policy question which</p>
Deposition of JAMES HAHNENBERG, 8/28/12 Page 295	Deposition of JAMES HAHNENBERG, 8/28/12 Page 297
<p>1 individuals who -- I mean, like I mentioned before, 2 the way this works at the end of the process is the 3 final draft, which I would have done a large 4 portion of it and others would have commented on 5 and made some revisions, it goes through a sign-off 6 chain where it goes up through our management to my 7 boss, to her boss and then to Rick Karl, and the 8 office of region of counsel I think signs off on 9 it. A lot of people sign off on it in the final 10 sign-off process. 11 Q. And as part of your preparation for today, do you 12 feel prepared to speak on behalf of the government 13 while -- with respect to this document and the 14 process behind it? 15 A. Yes. 16 Q. Are there any reasons why the government decided -- 17 withdrawn. 18 A. Let me back up too. Your question about who 19 reviewed this. Also my counsel has reviewed it 20 mainly for the legal kind of -- to make sure legal 21 is addressed properly in this. 22 Q. Thank you. And why was the ESD issued? What's the 23 role of an ESD generally? 24 A. Generally it's to document what we call significant 25 differences, and those would be differences that</p>	<p>1 is beyond my role. That's like a policy question. 2 In other words, would a particular specific action 3 basically require a ROD amendment? Like say 4 200 percent, would that require a ROD amendment to 5 make that kind of decision? It would really be a 6 policy determination which is not something I would 7 be involved in. 8 Q. How about for the Fox River remediation project? 9 Would a 100 percent increase in the cost estimate 10 have constituted a fundamental change? 11 A. I'm not sure. 12 Q. Is there -- 13 A. There's no bright line that tells you, 72 percent, 14 now you're in ROD amendment territory. There's 15 nothing that exists that tells you hard and fast a 16 certain number. 17 I can say in this case, yes, we are 18 62 percent more than the original cost, and 19 obviously we don't think that that is great enough 20 to fall within what we call a fundamental change 21 because the actual remedy is not changing, and 22 there are other things in this too which are other 23 significant differences which we haven't talked 24 about, but they're also lesser changes. 25 Q. And as the government 30(b)(6) representative, you</p>